Filed 5/14/19 P. v. Heidelberg CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. LARON LAMONT HEIDELBERG, SR., et al., Defendants and Appellants.	B288779 (Los Angeles County Super. Ct. No. BA439287-01)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary Lou Villar, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant Laron Lamont Heidelberg, Sr.

Roberta Simon, under appointment by the Court of Appeal, for Defendant and Appellant Sergio A. Martinez.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb and Shezad H. Thakor, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellants Laron Lamont Heidelberg, Sr., and Sergio A. Martinez pleaded no contest to offenses relating to real-estate fraud. After sentencing appellants to terms of imprisonment, the court ordered them to make restitution to their victims. As relevant here, the trial court ordered Heidelberg to pay $11,700 to the Iglesia Faro de Luz Elohim church, and both appellants to pay $132,548.76 to victim Zachary Love. On appeal, appellants challenge the court's restitution order. Heidelberg argues the church suffered no loss, and both appellants argue there was no causal connection between their offenses of conviction and Love's loss. For the following reasons, we disagree and therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *The Felony Complaint*

The Los Angeles County District Attorney brought a felony complaint charging appellants with numerous fraud-related offenses, including one count of conspiracy to commit

grand theft (Pen. Code, § 182, subd. (a)(1);[1] count 1) and multiple counts of procuring or offering a false or forged instrument (§ 115, subd. (a); counts 5, 9, 12, 15, 18, 46, 49, 79, 81, and 84 (both appellants); counts 25, 29, 34, 38, 41, 55, 63, 67, 70, and 73 (Heidelberg)). Appellants pleaded not guilty to all charges, and the parties proceeded to a preliminary hearing.

B. *The Prosecution's Evidence at the Preliminary Hearing*

1. *The Church's Rental Payments*

In September 2013, Heidelberg purchased a commercial property under his daughter's name. To record the grant deed that reflected the transfer, he included a forged certificate of acknowledgment, falsely attesting that his daughter personally appeared before the named notary. In October, Martinez contacted Juan Valenzuela, pastor at the Iglesia Faro De Luz Elohim church, which was one of the property's tenants. Martinez informed Valenzuela that he was the new property manager, and that Valenzuela should make the church's monthly rental payments to Heidelberg. In June 2014, Heidelberg sold the property, again using a forged certificate of acknowledgment to record the transfer. Nevertheless, he continued to receive monthly deposits from the church until March 2015, totaling $11,700.

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[1] Undesignated statutory references are to the Penal Code.

2. *Love's Property*

Zachary Love owned a residential property at 10210 Wilton Place in Los Angeles. In 2008, Love began serving an eight-year term of imprisonment in connection with an unrelated case. While Love was incarcerated, his tenants stopped paying rent, and he struggled to pay the mortgage on the property.

While in custody, Love met Heidelberg, who offered to help save the Wilton Place property from foreclosure. The two agreed that Love would give Heidelberg a 50% interest in the property. In exchange, Heidelberg would have Martinez evict the old tenants, find new ones, collect rent, and make the mortgage payments. Love and Heidelberg further agreed that they would later sell the property and split the proceeds. In accordance with this agreement, Love signed a grant deed transferring a 50% interest in the property to four individuals with the Heidelberg last name.[2] Love also gave Martinez a general power of attorney.

In January 2010, Martinez signed, and later recorded, another grant deed as Love's attorney in fact. This deed purported to transfer complete ownership of the Wilton

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[2] The complaint alleged, among other things, that appellants' criminal enterprise involved "utilizing the names of [Heidelberg's] children to create and record numerous fraudulent documents to gain control of [others'] real property." It also alleged that in furtherance of this enterprise, Heidelberg created the "Noral Family Private Trust . . . ."

Place property, including Love's remaining 50%, to the "Noral Family Trust . . . ." Love had not authorized Martinez to sign away his interest in the property. When Love discovered the January 2010 deed, he confronted Heidelberg. Heidelberg told Love he would "take care of it" once the two got out of prison.

In March 2012, Martinez sent Love a letter asking him to sign an attached grant deed transferring Love's interest in the property to the "Noral Family Private Trust." Martinez promised to pay Love $35,000 in exchange. Love did not sign that deed. On March 8, 2013, another grant deed was recorded, containing a forged certificate of acknowledgment, and purporting to transfer full ownership of the Wilton Place property from the "Noral Private Family Trust, . . . who acquired title as The Noral Family Trust" to the "Noral Family Private Trust" with "LaRon Heidelberg Jr." as its trustee. On March 11, 2013, yet another deed was recorded, containing a forged certificate of acknowledgment, and purporting to transfer Love's 50% interest in the property to the "Noral Family Private Trust . . . ." Finally, in July 2013, the Noral Family Private Trust sold the Wilton Place property to a third party, receiving net proceeds of $265,097.52.

C. *The Plea Agreement and the Restitution Order*

Before the conclusion of the preliminary hearing, the parties reached a plea agreement. As relevant here, pursuant to the agreement, Heidelberg pleaded no contest to

counts 1 and 9. Count 1, the conspiracy charge, listed several overt acts in furtherance of the conspiracy, including Martinez's instruction that the church make monthly rental payments to Heidelberg and the execution of the January 2010 grant deed for Love's property. Count 9 charged a false or forged instrument offense committed on or about March 11, 2013. Martinez pleaded no contest to count 5, which charged a false or forged instrument offense committed on or about March 8, 2013. All remaining counts were dismissed under the plea agreement.

The trial court sentenced Heidelberg to 12 years and eight months in state prison and Martinez to three years in state prison. After a contested hearing and briefing by the parties, the court ordered appellants to make restitution to the victims. Specifically, it ordered Heidelberg to pay the church $11,700, and further ordered appellants to pay Love $132,548.76, reflecting Love's share of the proceeds of the Wilton Place property's sale. Appellants challenge the restitution order on appeal.

DISCUSSION

The California Constitution instructs, "Restitution shall be ordered from the convicted wrongdoer in every case . . . in which a crime victim suffers a loss." (Cal. Const., art. I, § 28, subd. (b)(13)(B).) Penal Code section 1202.4, subdivision (f) implements this requirement, providing: "[I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the

defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." In accordance with this mandate, "[a] victim's restitution right is to be broadly and liberally construed." (*People v. Mearns* (2002) 97 Cal.App.4th 493, 500.)

"At a victim restitution hearing, a prima facie case for restitution is made by the People . . . . [Citation.] 'Once the victim has [i.e., the People have] made a prima facie showing of his or her loss, the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim. [Citations.]' [Citation.]" (*People v. Millard* (2009) 175 Cal.App.4th 7, 26 (*Millard*).) "[T]he standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt." (*People v. Baker* (2005) 126 Cal.App.4th 463, 469.)

We review the trial court's restitution order for an abuse of discretion. (*People v. Taylor* (2011) 197 Cal.App.4th 757, 761.) The court's factual findings must be supported by substantial evidence (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045). "'Substantial evidence means such evidence as a reasonable fact trier might accept as adequate to support a conclusion; evidence which has ponderable legal significance, which is reasonable in nature, credible and of solid value.'" (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1663.)

A. *Restitution to the Church*

Heidelberg contests the sufficiency of the evidence to show the church suffered any loss because of his actions. He argues that "[i]t is common knowledge that a tenant of a commercial property pays rent," and thus asserts that the church was required to pay rent for the property. According to Heidelberg, the true victim of his conduct was not the church, but "the owner of the property who was deprived of rental income because it was diverted to [Heidelberg]."

This argument fails for two reasons. First, the evidence established that as a result of Heidelberg's conduct, the church paid him funds to which he was not entitled. That evidence was sufficient to make a prima facie showing of the church's loss. (See, e.g., *People v. Moloy* (2000) 84 Cal.App.4th 257, 261 [insurance companies that paid out fraudulent claims suffered direct loss and were thus direct victims of defendant's crimes].) It was thus Heidelberg's burden to prove that despite this fraudulent transfer of funds, the church suffered no loss because some other occurrence made it whole. (See *Millard*, *supra*, 175 Cal.App.4th at p. 26.)

Second, even if the church's true landlord forwent collecting rent because of Heidelberg's conduct, section 1202.4, subdivision (f)(2) would preclude consideration of that fact in determining the church's loss. That provision instructs: "Determination of the amount of restitution . . . shall not be affected by the indemnification or subrogation rights of a third party." (*Ibid.*) Relying on this statutory

directive, in *People v. Dalvito* (1997) 56 Cal.App.4th 557, 558 (*Dalvito*), the Court of Appeal rejected a defendant's argument that the victim of theft suffered no loss. There, the victim had not yet paid for the stolen property (a necklace), and his debt for it was subsequently discharged. (*Ibid.*) Like Heidelberg, the defendant in *Dalvito* contended the true victim of his crime was a third person (in that case, the seller of the property). (*Id.* at p. 562.) Citing the instruction of section 1202.4, subdivision (f)(2), the court concluded it could not consider the seller's right to payment for the stolen property in determining the crime victim's loss. (See *Dalvito, supra,* at pp. 561-562.) Thus, it affirmed the trial court's restitution award for the victim. (*Id.* at p. 562.)

The same analysis applies here. Section 1202.4, subdivision (f)(2) precludes consideration of the rights of the true landlord, a third party, in determining the church's loss. (See *Dalvito*, *supra*, 56 Cal.App.4th at pp. 561-562.) Accordingly, substantial evidence supported the trial court's award of restitution to the church.

B. *Restitution to Love*

Both appellants contend there was insufficient evidence to establish a causal connection between the criminal conduct underlying their respective counts of conviction and Love's economic loss. Appellants do not dispute the evidence showed they recorded forged deeds in a series of transactions that culminated in the sale of Love's

property to a third party. They raise three basic arguments in support of their contention that their offenses nevertheless did not cause Love's loss of his property.

First, appellants point out that the felony complaint did not specify the forged or false instrument underlying each count. They maintain that without establishing what forged instruments underlay their convictions for procuring or offering false or forged instruments, the prosecution could not show their conduct caused Love's loss.

However, the complaint identified the approximate dates on which appellants committed their offenses. As relevant here, count 5, of which Martinez was convicted, listed March 8, 2013 as the approximate date of the offense, and count 9, of which Heidelberg was convicted, listed March 11, 2013. Those dates correspond to the recording dates of two forged instruments presented at the preliminary hearing: the March 8 and March 11, 2013 deeds. As appellants do not suggest any other documents matched those dates, it is reasonable to infer they are the instruments underlying their offenses.

Second, appellants assert Love had given up his entire interest in the Wilton Place property before the recording of the March 8 and March 11, 2013 deeds, and thus argue that the recording of those deeds could not have caused Love any loss. They note Love had validly transferred 50% of his interest in the property to Heidelberg as part of the agreement between the two. They then point to the January 2010 grant deed, which Martinez signed as Love's attorney

in fact, purporting to transfer Love's remaining interest in the property to the "Noral Family Trust." While the evidence at the preliminary hearing supported that this too was a fraudulent deed, appellants assert count 1 of the complaint, which included the execution of this instrument as an overt act in furtherance of the conspiracy, was dismissed under the plea agreement. Citing *People v. Harvey* (1979) 25 Cal.3d 754 (*Harvey*), they contend the court could not consider facts underlying counts that were dismissed under their plea agreement. They are mistaken.

Preliminarily, we observe Heidelberg pleaded no contest to count 1 pursuant to his plea agreement, and thus this argument is inapplicable to him by its own terms. Neither can Martinez benefit from *Harvey*. There, the defendant pleaded guilty under a plea agreement to two counts of robbery with the use of a firearm. (*Harvey*, *supra*, 25 Cal.3d at p. 757.) A third count, charging an unrelated robbery, was dismissed. (*Ibid.*) Yet in selecting an upper-term sentence for one of the defendant's counts of conviction, the trial court relied on the circumstances underlying the dismissed robbery count as an aggravating factor. (*Id.* at pp. 757-758.) Our California Supreme Court held this was error. (*Id.* at p. 758.) According to the court, implicit in the plea agreement was "the understanding (in the absence of any contrary agreement) that [the] defendant will suffer no adverse sentencing consequences by reason of the facts underlying, and solely pertaining to, the dismissed count." (*Ibid.*)

The *Harvey* Court clarified, however, that the rule it announced did not prevent sentencing courts from considering the facts underlying dismissed counts where those facts are "[t]ransactionally related to the offense to which [the] defendant pleaded guilty." (*Harvey, supra,* 25 Cal.3d 758, italics omitted.) The Court explained: "'The plea bargain does not . . . preclude the sentencing court from reviewing all the circumstances relating to [the defendant's a]dmitted offenses to the legislatively mandated and that a [sentence] be imposed on [the defendant] commensurate with the gravity of his crime.'" (*Ibid., italics omitted*, quoting *People v. Guevara* (1979) 88 Cal.App.3d 86, 94.) Because the dismissed robbery charge in *Harvey* was "wholly separate from[] the admitted robberies," the Court concluded the trial court erred in considering it for sentencing purposes. (*Harvey, supra,* at p. 759.)

Harvey's rule "expanded to cover victim restitution [citation], and was soon codified" in section 1192.3, subdivision (b). (*People v. Weatherton* (2015) 238 Cal.App.4th 676, 678.) Under that provision, "[i]f restitution is imposed which is attributable to a count dismissed pursuant to a plea bargain, . . . the court shall obtain a waiver pursuant to [*Harvey*] from the defendant as to the dismissed count." (§ 1192.3, subd. (b).)

Neither *Harvey* nor section 1192.3 applies to Martinez. Unlike the defendant in *Harvey*, who sought only to avoid attribution of wrongful conduct underlying the dismissed counts to him, Martinez seeks to confine the court to a

fictional fact pattern, under which the January 2010 deed effected a valid transfer of Love's interest in the property. Regardless of Martinez's responsibility for wrongdoing as to that deed, there was evidence that it was fraudulent, and thus that Love had not validly relinquished his remaining interest prior to appellants' offenses of conviction. As Martinez's own argument illustrates, these facts do not "solely pertain[] to[] the dismissed count," but are also relevant to his offense of conviction and its resulting harm. (*Harvey*, 25 Cal.3d at p. 758.) Thus, *Harvey* does not preclude consideration of the invalidity of the January 2010 deed. (See *ibid.*) Similarly, the trial court's restitution order did not hold Martinez liable for his conduct as to that deed, and thus it was not "attributable" to a dismissed count for purposes of section 1192.3. Given the evidence that the January 2010 deed was fraudulent, appellants' argument that it validly terminated Love's interest in the property fails.

Third, Martinez contends his conduct was not a proximate cause of Love's loss because it was the subsequent sale of the property to a third party that ultimately deprived Love of his property, but there was "no proof [Martinez] had any part of [it]" or that he "knew what Heidelberg would do . . . ." In essence, Martinez argues that Heidelberg's later sale of the property was a superseding act absolving him of liability in restitution.

Tort principles of proximate causation, including the superseding-cause doctrine, apply to victim restitution

claims in criminal cases. (See *People v. Jones* (2010) 187 Cal.App.4th 418, 427.) A third party's intervening misconduct "cuts off liability, and becomes known as a superseding cause, if "'it is determined that the intervening cause was not foreseeable and that the results which it caused were not foreseeable . . . .'"" (*Martinez v. Vintage Petroleum, Inc.* (1998) 68 Cal.App.4th 695, 700 (*Martinez*), italics omitted.) Superseding cause is an affirmative defense, and thus "[t]he defendant has the burden to prove . . . that the intervening event is so highly unusual or extraordinary that it was unforeseeable." (*Arreola v. County of Monterey* (2002) 99 Cal.App.4th 722, 760.) Where, as here, the party challenging the findings of the trier of fact had the burden of proof at trial, "'the question for a reviewing court [is] whether the evidence compels a finding in favor of the appellant as a matter of law.'" (*In re R.V.* (2015) 61 Cal.4th 181, 218.)

Far from compelling a finding in Martinez's favor, the evidence here established that Heidelberg's sale of the property was, at the very least, foreseeable. In March 2012, Martinez sent Love a letter asking him to sign an attached grant deed transferring Love's interest in the property to the "Noral Family Trust," and promising him $35,000 in exchange. Love did not sign that deed. In March 2013, Martinez recorded the fraudulent deed for which he was convicted, transferring full ownership of the property from the "Noral Private Family Trust" to the "Noral Family Private Trust" with "Laron Heidelberg Jr." as its trustee.

The Noral Family Private Trust then sold the property to a third party. Thus, the evidence suggests Martinez knew Love had not relinquished his interest in the property, yet proceeded to record a fraudulent deed purporting to transfer the property to the Heidelberg-created entity that later sold it.

Given this evidence, Martinez cannot show the evidence compelled a finding that Heidelberg's fraudulent sale of the property was unforeseeable and was thus a superseding cause. (See *Martinez*, *supra*, 68 Cal.App.4th at p. 700; cf. *Chanda v. Federal Home Loans Corp.* (2013) 215 Cal.App.4th 746, 754, 756 [where mortgage broker allegedly "did nothing to protect against potential fraud," "submission of forged loan documents[] was highly foreseeable," precluding jury instruction on superseding cause].) In short, substantial evidence supported that appellants' conduct underlying their convictions caused Love's losses.

DISPOSITION

The judgment is affirmed.

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MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.